

¹ Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, FCC 07-138 (released Aug. 6, 2007), app. B (“*Seventh Report and Order*”).

which lie outside their control. To help ensure that they are able to avoid disruption of service on February 18, 2009, the Commission can and should take three concrete steps to help address these problems:

- Where reasonably necessary to ensure replacement of one DTV antenna with another on a timely basis in light of tower crew schedules and winter weather conditions, the Commission should confirm that Section 73.1615 of the rules permits such stations to terminate their pre-transition digital service for a brief period upon notification to the Commission, where they continue to provide service to their viewers over their analog channel prior to the transition.
- In order to expedite such stations' ability to place antenna and transmitter orders and arrange for tower work in the limited time remaining during the transition, the Commission should, by rule, dispense with the requirement of construction permits for the facilities specified in the *Seventh Report and Order's* final table of allotments for DTV service, effective immediately.
- To avoid unnecessary disruption of viewer expectations, the Commission should prohibit MVPDs from rejecting carriage of new digital signals for signal quality reasons without a prior ruling by the Commission, where such MVPDs have been carrying the station's analog signal, and the DTV signal is predicted to be at least as strong as the analog one.

I. THE COMMISSION SHOULD PERMIT CATEGORY THREE STATIONS TO RELY ON ANALOG SERVICE ALONE WHERE REASONABLY NECESSARY TO ENSURE THEIR ABILITY TO REPLACE A PRE-TRANSITION DIGITAL SIGNAL WITH A POST-TRANSITION ONE BY THE TRANSITION DATE.

As the Notice recognizes, category three stations such as WWDP-DT face unique difficulties, not of their own making, in successfully completing the DTV transition. First, like other stations, many of them will need to order a new transmission line, antenna, and transmitter. The Notice cites estimates of up to six months or longer to design, order, receive, and install the antenna, and a similar time frame for the transmitter. Notice ¶¶ 22 n.49, 25 n.52. Second, such stations "will need to coordinate with other stations" that "may occupy [their] post-transition channel." Notice ¶ 28. In WWDP-DT's case, its post-transition DTV channel (10) is currently in use by WJAR(TV), Providence, RI, which will continue to be authorized to operate on that

analog channel during the transition period. Third, many category three stations will need to replace one top-mounted antenna (either their analog one or, as in WWDP-DT's case, their pre-transition digital one) with another, most likely during the winter season where in many areas of the country weather delays will not be uncommon. Even without such delays, the Notice cites estimates that "it may take a crew approximately two to three weeks to complete the installation once the necessary hardware and crew are on site." Notice ¶ 22 n.49.²

For some stations, it might be possible to avoid such last-minute transition difficulties by turning off their analog service early in order to initiate post-transition DTV service at the same location. The Commission has sought comment on how it might encourage such steps. Notice ¶ 37. In Norwell's case, however, it will not be able to make such an early transition, because WJAR-TV will be continuing to use WWDP-DT's proposed post-transition digital channel during the transition period. What Norwell thus needs is the flexibility to turn off its pre-transition *digital* service sufficiently in advance of February 18, 2009, so that it can install and test its post-transition digital antenna and transmission line in time to be reasonably assured that weather or other scheduling delays will not leave its viewers without *any* service after that date, when it will be required to shut off both its analog and its out-of-core pre-transition DTV channel. Because Norwell is operating its analog facilities at a different site from that for its pre- and post-digital channels, it would be able to make the switch of those digital channels without any loss of analog service.

Section 73.1615 of the Commission's rules, governing operation during modification of facilities, contemplates such flexibility.³ The Notice cites this rule in connection with its

² While this estimate related to re-mounting a side-mounted digital antenna to the top of the tower, replacing one top-mounted antenna with another would likely not require any less time than re-mounting a side-mounted one.

³ 47 C.F.R. § 73.1615.

comparable discussion of reduction or termination of analog service. Notice ¶ 42 n.85. Section 73.1615 provides that a licensee that is “in the process of modifying existing facilities,” and “determines it is necessary either to discontinue operation or to operate with temporary facilities to continue program service,” may generally do so for a period of up to 30 days upon notification to the Commission, and may extend that period further by informal letter request.⁴ A category three DTV licensee replacing its pre- with its post-transition DTV facilities is certainly “in the process of modifying existing facilities as authorized by a construction permit,” and in the foregoing circumstances it would be “necessary” to operate temporarily with only analog facilities so as to continue program service, while also ensuring that digital service would be ready to begin on its new post-transition DTV channel promptly on February 18, 2009. Moreover, this temporary loss of digital service during the replacement period would have a minimal effect on viewers. The only viewers who would experience any effect would be those with digital sets, who would still be able to receive WWDP’s analog signal (because digital receivers include analog tuners).

Of course, given the public interest benefits associated with digital service, the Commission may have legitimate concerns that licensees not rely on Section 73.1615 to shut off a current DTV signal well before the transition date, even though viewers may continue to receive the analog signal in the interim. There are clear marketplace incentives not to turn off a digital service too early, because of the substantial investments broadcasters like Norwell have made in their DTV facilities. However, Norwell believes that having the flexibility to turn off pre-transition digital service within 60 days prior to the transition would ordinarily provide

⁴ *Id.* §§ 73.1615(a), (c).

enough time to ensure that, even accounting for weather or other delays, such category three stations will be ready to initiate service over their post-transition channels by February 18, 2009.

II. THE COMMISSION SHOULD EXPEDITE THE TRANSITION BY ACTING IMMEDIATELY TO DISPENSE WITH CONSTRUCTION PERMIT APPLICATIONS FOR POST-TRANSITION DTV FACILITIES THAT HAVE NOW BEEN APPROVED IN THE NEW DTV TABLE OF ALLOTMENTS.

In the Notice, the Commission recognized that the construction permit application process, which cannot begin until the rules adopted in this proceeding become effective,⁵ has a critical impact on “the . . . time to order equipment and build [DTV] facilities.” Notice ¶ 94. One way to maximize that time would be to eliminate any need to file for (and await approval of) construction permits, for those stations whose post-transition DTV facilities are identical (in channel, location, height, and power) to those specified in the DTV table of allotments recently finalized in the *Seventh Report and Order*.⁶ It would appear wholly unnecessary to apply for facilities already prescribed in that table, and the Commission’s need to maintain records of the facilities operated by broadcast licensees could be satisfied by the required filing of covering license applications. At the same time, by eliminating this unnecessary step the Commission could shorten by weeks or months the delays already being experienced by stations in being unable to order equipment. Doing so would be far more efficient than an undertaking “to process expeditiously” applications filed within 45 days after the effective date of the rules adopted in this proceeding. Notice ¶ 94. To enable stations to take full advantage of this proposal by promptly ordering their post-transition equipment, the Commission should also make this rule change effective immediately.

⁵ Notice ¶ 94. See also *Seventh Report and Order* ¶¶ 15 n.28, 87.

⁶ Section 319 of the Communications Act prohibits the Commission from waiving the requirement of construction permits for broadcast stations, except that “the Commission may by regulation determine that a permit shall not be required for minor changes in the[ir] facilities.” 47 U.S.C. § 319(d). The changes contemplated in the new DTV table are minor changes. Notice ¶ 93 & n.182.

III. THE COMMISSION SHOULD ENSURE THAT SIGNAL QUALITY DISPUTES DO NOT DISRUPT THE DTV TRANSITION.

In paragraph 125 of the Notice, the Commission addressed the need for “coordination . . . between broadcast television stations and MVPDs to facilitate a timely and smooth transition.” In particular, the Commission flagged potential issues regarding signal quality in reception from new channels, and the possible need by MVPDs “to test reception and retransmission capabilities in advance of the transition.”

Norwell agrees that coordination will be critical to ensuring that viewing of broadcast channels by MVPD subscribers is not disrupted on the February 18, 2009, transition date. Ideally, stations will be able to test their new DTV signals in cooperation with MVPDs well in advance of that date to ensure compliance with the Commission’s signal quality standards at the appropriate headends. As noted above, however, in the case of category three stations, there may well be little time for such testing in advance of the transition date. In this context, the Commission should make clear that it will not permit MVPDs to disrupt existing viewing patterns by making unsubstantiated claims of poor signal quality with respect to post-transition DTV broadcasts. In cases where the new digital signal is predicted to be at least as strong as the analog signal it replaces, the Commission should prohibit MVPDs from deleting carriage without a prior Commission validation of their claim of poor signal quality. In the context of the digital transition, category three stations will likely have no time to resolve these disputes before the transition date. While they will have every incentive to work cooperatively with MVPDs to ensure that their signals are viewable to MVPD subscribers, the lack of any time to do so between the initiation of post-transition DTV service and the turnoff of their analog signals makes them uniquely vulnerable to potential abuses by MVPDs. A stay of any disruption of

viewing pending a determination by the Commission about signal quality would be equitable in these unique circumstances.

CONCLUSION

For the reasons stated above, the Commission should take three steps to ensure a timely transition to post-transition DTV service by category three stations: (1) permit them to turn off their pre-transition DTV signals early, and rely on analog service until the transition date, where necessary to switch to their post-transition facilities, (2) immediately by rule dispense with the need for filing construction permit applications for those stations seeking to install DTV facilities identical to those set forth in the recently finalized DTV table of allocations, and (3) ensure that MVPDs do not stymie the DTV transition and disrupt viewing patterns by unreviewed challenges to DTV signal quality in circumstances where the DTV signal is predicted to be at least as strong as the analog one previously carried by such MVPDs.

Respectfully submitted,

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